CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

Amendments to the Water Quality Control Plan for the Tulare Lake Basin

To Edit and Update Language

Draft Staff Report

December 2013

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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DISCLAIMER

This publication is a report by staff of the California Regional Water Quality Control Board, Central Valley Region. This report contains the evaluation of alternatives and technical support for the adoption of a Basin Plan Amendment to the Water Quality Control Plan for the Tulare Lake Basin (Resolution No. TBD). Mention of specific products does not represent endorsement of those products by the Central Valley Water Board

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EXECUTIVE SUMMARY

Staff of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) proposes for Central Valley Water Board consideration several non-regulatory amendments to correct errors and update language in the Water Quality Control Plan for the Tulare Lake Basin (Basin Plan). For instance, these amendments include correcting the description of the boundary between the San Joaquin River Basin and the Tulare Lake Basin; correcting footnote b correlated with Table II-2 of the Basin Plan; updating name references to the California Department of Public Health, the California Department of Resources Recycling and Recovery, and the California Department of Fish and Wildlife; incorporating State Water Resources Control Board (State Water Board) policies that are pertinent to the Basin Plan; and other corrections of typographic errors and updating of Basin Plan language. Section 2 of the Staff Report provides further discussion and specifics of Basin Plan amendments being proposed.

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LIST OF ACRONYMS

AB	Assembly Bill
ACL	Administrative Civil Liability
AGR	Agricultural supply beneficial use
BMP	Best Management Practices
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
COLD	Cold freshwater habitat beneficial use
CTR	California Toxics Rule
CV-SALTS	Central Valley Salinity Alternatives for Long-Term Sustainability
DHS	Department of Health Services
EC	Electrical Conductivity
GWR	Ground water recharge beneficial use
IND	Industrial service supply beneficial use
MCL	Maximum Contaminant Levels
MIGR	Migration of striped bass, sturgeon, shad, salmon and steelhead beneficial use
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MUN	Municipal and domestic supply beneficial use
NPDES	National Pollutant Discharge Elimination System
NPS	Nonpoint Source
OAL	Office of Administrative Law
PRO	Industrial process supply beneficial use
REC-1	Water contact recreation beneficial use
REC-2	Non-contact water recreation beneficial use
SIP	Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (a.k.a. State Implementation Policy)
SEP	Supplemental Environmental Project
SPWN	Spawning, reproduction and/or early development of striped bass, sturgeon, shad, salmon and steelhead beneficial use
SWAT	Solid Waste Assessment Test
SWRCB	State Water Resources Control Board
TMDLs	Total Maximum Daily Loads
USC	United States Code
USEPA	United States Environmental Protection Agency
WARM	Warm freshwater habitat beneficial use
WILD	Wildlife habitat beneficial use

1 INTRODUCTION

Basin Plans form the basis for regulatory actions by California Regional Water Quality Control Boards (Regional Water Boards) taken to protect waters of the state and to assure compliance with the Water Code. The preparation and adoption of a Basin Plan is required by Water Code section 13240, which implements provisions of the federal Clean Water Act (33 United States Code (USC) § 1251 et seq.). Section 303 of the Clean Water Act requires that states adopt water quality standards, which consist of the designated uses of navigable waters covered by the Clean Water Act and water quality criteria (referred to as "water quality objectives" in California) designed to protect the designated uses. Pursuant to state law, Basin Plans must consist of all of the following (Wat. Code, § 13240-13244):

a) beneficial uses to be protected;
b) water quality objectives;
c) a program of implementation needed for achieving water quality objectives; and
d) surveillance and monitoring to evaluate the effectiveness of the program.

Basin Plans are adopted and amended by the Regional Water Boards using a structured process involving peer review, full public participation, state environmental review, and state and federal agency review and approval. Each of the nine Regional Water Boards in California has adopted Basin Plans for its geographic region. The Central Valley Water Board has adopted two Basin Plans, one for the Sacramento River and San Joaquin River Basins and one for the Tulare Lake Basin.

The authority for the Regional Water Boards to formulate and adopt Basin Plans and to periodically review these plans is derived from Water Code section 13240. However, a Basin Plan does not become effective until approved by the State Water Resources Control Board (State Water Board) (Wat. Code, § 13245), and the Office of Administrative Law (OAL). The United States Environmental Protection Agency (USEPA) also must review and approve amendments that add or modify water quality standards for waters of the United States.

1.1 Mandates for Basin Plan Amendments

The Regional Water Boards must comply with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) when amending Basin Plans. The Secretary for Natural Resources has certified the basin planning process as exempt from the CEQA requirement to prepare an environmental impact report or other appropriate environmental document (Public Resources Code, § 21080.5.; Cal Code Regs., tit. 14, § 15251, subd. (g)). Rather, State Water Board regulations require that basin plan amendments be accompanied by substitute environmental documentation that consists of, at a minimum, a written report and an Environmental Checklist and Determination with respect to Significant of Potentially Significant Environmental Impacts (Cal. Code Regs., tit. 23, § 3775 et seq.).

In this case, the proposed edits and updates to the Tulare Lake Basin plan are non-regulatory corrections to the language of the Basin Plan and updates to the Basin Plan to reflect State Water Board adopted plans and policies that are already in effect. The State Water Board conducted an environmental analysis of these plans and policies when it considered these plans and policies. The proposed amendments incorporate these plans and policies by reference so there are no additional potential significant effects on the environment that will need to be analyzed as part of these amendments. These proposed edits and updates to the Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed amendments are not a "project"[1] for purposes of CEQA compliance, and are therefore legally exempt from CEQA requirements.[2] Likewise, the proposed amendments are exempt from the State Water Board's certified regulatory program requirements because those requirements do not apply if the Board determines that the activity is exempt from CEQA. Despite the exemption from certified regulatory program requirements, Board staff has implemented the remaining regulatory procedures used in the Basin Planning process.

1.2 Water Quality Control Plan for the Tulare Lake Basin

The Water Quality Control Plan for the Tulare Lake Basin was first adopted in 1975 although several revisions have been adopted and approved since then. The current Basin Plan is the Second Edition, Revised in January 2004.

2 PROPOSED BASIN PLAN AMENDMENTS

2.1 Basin Boundary Description

The 1975 Water Quality Control Plan for the Tulare Lake Basin (5D) relied exclusively on basin planning maps to identify the boundary between the San Joaquin River Basin and the Tulare Lake Basin. The narrative boundary description between the San Joaquin River Basin and the Tulare Lake Basin was later added to both the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin (Basin Plans) in the mid-90s. The boundary is described to follow the San Joaquin River Channel to Millerton Lake which places the Little Dry Creek watershed (Hydrologic Subareas No. 540.70 and 545.30) in the Tulare Lake Basin. However, the basin planning maps depict the Little Dry Creek watershed as part of the San Joaquin River Basin.

In 2004, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins was amended by Resolution No. R5-2004-0108 to clarify the boundary description. Alt-

[1] "Project" is defined by CEQA as a governmental activity "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment…" Pub. Resources Code § 21065.

[2] Pub. Resources Code § 21080, subd. (a) (defining CEQA to apply only to discretionary "projects"): see also, 14 C.C.R. § 15060, subd. (c)(3) (clarifying that an activity is not subject to CEQA if it is not a project.)

hough the Water Quality Control Plan for the Tulare Lake was not amended at the same time, staff has implemented the change in the regulatory programs.

To correct the boundary description for the Little Dry Creek watershed and to make the corresponding boundary description changes made to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, staff proposes the following amendment for the Water Quality Control Plan for the Tulare Lake Basin:

Page I-1

> Note: In 1976, the U.S. Geologic Survey, the Department of Water Resources, and the State Water Resources Control Board agreed upon the hydrologic boundaries for basins within California. The agreed boundaries did not match the planning boundaries in certain cases such as between the San Joaquin River Basin and the Tulare Lake Basin. The planning boundary between the San Joaquin River Basin and the Tulare Lake Basin follows the southern watershed boundaries of the Little Panoche Creek, Moreno Gulch, and Capita Canyon to boundary of the Westlands Water District. From here, the boundary follows the northern edge of the Westlands Water District until its intersection with the Firebaugh Canal Company's Main Lift Canal. The basin boundary then follows the Main Lift Canal to the Mendota Pool and continues eastward along the channel of the San Joaquin River ~~northern boundary of Little Panoche Creek basin, continues eastward along the channel of the San Joaquin River~~ to the southern boundary of the Little Dry Creek watershed (Hydrologic Subareas No. 540.70 and 545.30) ~~Millerton Lake in the Sierra Nevada foothills,~~ and then follows along the southern boundary of the San Joaquin River drainage basin.

This proposed amendment has no effect on dischargers since staff has been implementing the boundary description adopted by the Central Valley Water Board in Resolution No. R5-2004-0108 and have always included the Little Dry Creek watershed as part of the San Joaquin River Basin.

It should be noted that regulation of dischargers in the Little Dry Creek watershed is similar regardless of which Basin Plan the watershed is assigned to. Under the San Joaquin River Basin Plan, the beneficial uses of Little Dry Creek are assigned as a tributary to the San Joaquin River, Friant Dam to Mendota Pool, and include municipal and domestic supply (MUN); agricultural supply for both irrigation and stock watering (AGR); industrial process supply (PRO); water contact recreation, including canoeing and rafting (REC-1); non-contact water recreation (REC-2); warm freshwater habitat (WARM); cold freshwater habitat (COLD); migration of striped bass, sturgeon, shad, salmon and steelhead (MIGR); spawning, reproduction and/or early development of striped bass, sturgeon, shad, salmon and steelhead (SPWN); and wildlife habitat (WILD). Under the Tulare Lake Basin Plan, the beneficial uses of Little Dry Creek would be as an "Other Eastside Stream" and include MUN, AGR, REC-1, REC-2, WARM, COLD, WILD, and ground water recharge (GWR). Under the San Joaquin River Basin Plan, the ground water in the Little Dry Creek watershed is considered to be suitable or potentially suitable for MUN, AGR, industrial service supply (IND), and PRO. Under the Tulare Lake Ba-

sin Plan, the beneficial uses of ground water in the Little Dry Creek watershed would be MUN, AGR, IND, PRO, REC-1 and WILD. Neither Basin Plan has any site specific water quality objectives or special implementation programs that are applicable to the Little Dry Creek watershed.

2.2 Page II-7: Footnote b

In 1990, the Central Valley Water Board adopted Resolution No. 90-240 to remove the municipal and domestic supply beneficial use (MUN), but no other beneficial uses, of ground water in the vicinity of the McKittrick Waste Treatment site. In the 1995, Second Edition of the Water Quality Control Plan for the Tulare Lake Basin, an incorrect reference of Resolution No. 90-240 was introduced. For clarity, staff proposes to revise footnote b on page II-7 of the current Basin Plan to include the language from Resolution No. 90-240.

> [b] Ground water and spring water within ½ mile radius of the McKittrick Waste Treatment (formerly Liquid Waste Management) site in Section 29, T30S, R22E, MDB&M, are not suitable, or potentially suitable, for municipal or domestic supply (MUN)~~, have no beneficial uses~~.

The proposed amendment will correct the Basin Plan to accurately reflect what the Central Valley Water Board adopted in Resolution No. 90-240 which removed the MUN beneficial use from the ground water and spring water within a half mile of the McKittrick Waste Treatment site in section 29, T30S, R22E, MDB&M. While waste discharge requirements regulating discharges in this area acknowledge that the basin plan has classified the ground water and spring water as having no beneficial uses, the waste discharge requirements provide for more stringent prescriptive requirements such that adding agricultural and industrial beneficial uses to the ground water and spring water will not change the requirements in the affected waste discharge requirements. Therefore, correcting the Basin Plan language regarding MUN has no effect on dischargers and does not change how staff has implemented protection of beneficial uses identified in Table II-2 of the Basin Plan.

2.3 Update References to the California Department of Public Health

Senate Bill 162, Chapter 241, Statutes of 2006 established a new California Department of Public Health and transferred certain responsibilities, including the Drinking Water and Environmental Health Program and the Laboratory Field Services Program from the former California Department of Health Services to the new California Department of Public Health. For clarity, staff proposes to update references in the Basin Plan from the California Department of Health Services to the California Department of Public Health and make other minor corrections to typographic errors. This proposed amendment has no regulatory effect.

The following is the proposed amendment:

Pages III-3, III-4, and III-7

The Regional Water Board will consider all material and relevant information submitted by the discharger and other interested parties and numerical criteria and guidelines for detrimental levels of chemical constituents developed by the State Water Board, the California Office of Environmental Health Hazard Assessment, the California Department of Public Health ~~Services~~, the U.S. Food and Drug Administration, the National Academy of Sciences, the U.S. Environmental Protection Agency, and other appropriate organizations to evaluate compliance with this objective.

Pages III-6, and III-8

The Regional Water Board will also consider all material and relevant information submitted by the discharger and other interested parties and numerical criteria and guidelines for toxic substances developed by the State Water Board, the California Office of Environmental Health Hazard Assessment, the California Department of Public Health ~~Services~~, the U.S. Food and Drug Administration, the National Academy of Sciences, the U.S. Environmental Protection Agency, and other appropriate organizations to evaluate compliance with this objective.

Page IV-11

The California Department of Public Health ~~Services~~ will be consulted for all cases.

Page IV-12

3. The reclamation project is consistent with the "Guidelines for Use of Reclaimed Water" developed by the Department of Health Services (now the California Department of Public Health). The "Guidelines for Use of Reclaimed Water" is incorporated by reference into this plan. (See Appendix 34.)

Page IV-22

To evaluate compliance with the narrative water quality objectives, the Regional Water Board considers, on a case-by-case basis, direct evidence of beneficial use impacts, all material and relevant information submitted by the discharger and other interested parties, and relevant numerical criteria and guidelines developed and / or published by other agencies and organizations (e.g., State Water Board, California Department of Public Health ~~Services~~, California Office of Environmental Health Hazard Assessment,...

Page V-2

6. State Water Board Resolution No. 88-23, Policy Regarding Regulations of Underground Storage Tanks

This policy, adopted on 18 February 1988, implements a pilot program to fund oversight of remedial action at leaking underground storage tank sites, in cooperation with the California Department of Public Health ~~Services~~.

Page V-3

2. Department of Toxic Substances Control ~~Department of Health Services~~

   On 26 January 1986, the State Water Board signed an MOA~~U~~ with the Department of Health Services, now the Department of Toxic Substances Control regarding the implementation of the hazardous waste program.

3. California Department of Public Health ~~Services~~

   In 1996, the State Water Board signed an MOA with the Department of Health Services (now the California Department of Public Health) regarding the use of reclaimed water.

Page V-4

6. ~~Department of Health Services /~~ Department of Toxic Substances Control

   On 30 July 1990, the State Water Board signed a MOU with the Department of Health Services, Toxic Substances Control Program (later reorganized into the Department of Toxic Substances Control) explaining the roles of the agencies (including the Regional Water Board) in the cleanup of hazardous waste sites.

Page 1 of the Appendix Directory

12. State Water Board MOA~~U~~ with DHS (Implementation of Hazardous Waste Program)

2.4 Update Reference to Maximum Contaminant Levels for Radioactivity

The water quality objectives for Radioactivity reference California Code of Regulations (CCR), title 22, section 64443, Table 4, which was prospectively incorporated by reference, including future changes. This section was repealed and replaced with sections 64442 and 64443. Staff proposes the following revisions to surface and ground water quality objectives for Radioactivity on pages III-4 and III-8:

> … waters designated MUN shall not contain concentrations of radionuclides in excess of the maximum contaminant levels (MCLs) specified in Table 64442 of Section 64442 and Table 64443 ~~4 (MCL Radioactivity)~~ of Section 64443 of Title 22, California Code of Regulations, which are incorporated by reference into this plan. This incorporation-by-

reference is prospective, including future changes to the incorporated provisions as the changes take effect.

This proposed amendment has no regulatory effect since the Basin Plan already authorized these changes.

2.5 Correcting Electrical Conductivity Units

The Basin Plan references the units of electrical conductivity (EC) in several different formats (e.g. micromhos per centimeter and micromhos/cm). For consistency and to correct typos of the referenced units for EC, staff proposes the following non-regulatory amendment:

TABLE III-2
TULARE LAKE BASIN
MAXIMUM ELECTRICAL CONDUCTIVITY LEVELS

Stream	Location	Max. Electrical Conductivity (µmhos/cm)
Kings River		
Reach I	Above Kirch Flat	100
Reach II	Kirch Flat to Pine Flat Dam	100[a]
Reach III	Pine Flat Dam to Friant-Kern	100
Reach IV	Friant-Kern to Peoples Weir	200
Reach V	Peoples Weir to Island Weir	300[b]
Reach VI	Island Weir to Stinson Weir on North Fork and Empire Weir No. 2 on South Fork	300[b]
Kaweah River		
Reach I	Above Lake Kaweah	175
Reach II	Lake Kaweah	175[c]
Reach III	Below Lake Kaweah	[d]
Tule River		
Reach I	Above Lake Success	450
Reach II	Lake Success	450[e]
Reach III	Below Lake Success	[d]
Kern River		
Reach I	Above Lake Isabella	200
Reach II	Lake Isabella	300
Reach III	Lake Isabella to Southern California Edison Powerhouse (KR-1)	300
Reach IV	KR-1 to Bakersfield	300[f]
Reach V	Below Bakersfield	[d]

[a] Maximum 10-year average – 50 µmhos

[b] During the period of irrigation deliveries. Providing, further, that for 10 percent of the time (period of low flow) the following shall apply to the following reaches of the Kings River:

Reach V 400 µmhos
Reach VI 600 µmhos

[c] Maximum 10-year average – 100 µmhos

[d] During the irrigation season releases should meet the levels shown in the preceding reach. At other times the channel will be dry or controlled by storm flows.

[e] Maximum 10-year average – 250 µmhos

[f] Maximum 10-year average – 175 µmhos

Page IV-10

- The maximum electrical conductivity (EC) of a discharge shall not exceed the quality of the source water plus 500 micromhos per centimeter (µmhos/cm) or 1,000 ~~micromhos per centimeter~~ µmhos/cm, whichever is more stringent. When the water is from more than one source, the EC shall be a weighted average of all sources.

- Discharges shall not exceed an EC of 1,000 ~~micromhos per centimeter~~ µmhos/cm, a chloride content of 175 mg/l, or a boron content of 1.0 mg/l.

In addition to the above, discharges to waters having an EC or water quality objective of less than 150 ~~micromhos~~ µmhos/cm shall comply with the following:

Page IV-11

- The incremental increase in salts from use and treatment must be controlled to the extent possible. The maximum EC shall not exceed the EC of the source water plus 500 ~~micromhos/cm~~ µmhos/cm. When the source water is from more than one source, the EC shall be a weighted average of all sources.

- In the Poso Creek Subarea discharges shall not exceed 1,000 ~~micromhos/cm~~ µmhos/cm EC, 200 mg/l chlorides, and 1.0 mg/l boron. The Poso Creek subarea consists of about 35,000 acres of land between State Highway 99 and 65 about six miles north of Bakersfield, and is defined more specifically in Regional Water Board Resolution No. 71-122, which is incorporated by reference into this plan.

- Discharges to areas that may recharge to good quality ground waters shall not exceed an EC of 1,000 ~~micromhos per centimeter~~ µmhos/cm, a chloride content of 175 mg/l, or a boron content of 1.0 mg/l.

2.6 Clarifying Language to Chapter IV, "Implementation Plan"

The introduction to Chapter IV, "Implementation Plan" does not clearly describe the sections of the chapter. Currently the introduction of this chapter uses a number system to identify sections of the chapter though the numbers do not correspond with any bulleted items in the chapter. Staff proposes the following non-regulatory amendment to include the section titles and eliminate the number system that is being used on page IV-1:

The "Water Quality Concerns", ~~first~~ section of this chapter describes water quality concerns and how the Regional Water Board addresses them. This section is organized by discharge type (agriculture, silviculture, mines, etc.). The "Nature of Control Actions Implemented by the Regional Water Board", ~~second~~ section lists Regional Water Board programs, and plans and policies which will result in the achievement of most of the water quality objectives in this plan. This section includes a

list of Regional Water Board prohibition areas. The "Actions Recommended for Implementation by Other Agencies", ~~third~~ section contains recommendations for appropriate action by entities other than the Regional Water Board to protect water quality. The "Continuous Planning for Water Quality Control", ~~fourth~~ section describes how the Regional Water Board integrates water quality control activities into a continuous planning process.

2.7 Update References to Title 27

The Solid Waste Disposal Regulatory Reform Act [Chapter 656, Statutes of 1993, Assembly Bill (AB) 1220] directed consolidation of regulations for solid waste disposal facilities. In 1997 solid waste provisions from CCR, title 14 and CCR, title 23 were consolidated into CCR, title 27.

This proposed amendment to update references to title 27 regulations for solid waste disposal facilities has no regulatory effect since staff has been implementing the change since the consolidation.

Page IV-3

> Persons proposing new evaporation basins and expansion of evaporation basins shall submit technical reports that assure compliance with, or support exemption from, Title 27, California Code of Regulations, Section 20080 ~~Title 23, California Code of Regulations, Section 2510,~~ et seq., and that discuss alternatives to the basins and assess potential impacts of and identify appropriate mitigations for the proposed basins.

Page IV-4

> Title 27, California Code of Regulations, ~~Title 23, California Code of Regulations, Section 2510-2601 (Chapter 15)~~ contains minimum standards to protect both surface and ground waters from discharges of animal waste as confined animal facilities.
>
> In addition to the standards in Title 27 ~~Chapter 15~~, the following is required:

Page IV-15

> The discharge of produced wastewater to land, where the concentration of constituents may cause ground water to exceed water quality objectives, shall be subject to the requirements contained in the California Code of Regulations, Title 27 ~~23~~, Section 20005 ~~2510~~, et seq. (Title 27 ~~Chapter 15~~).

This amendment updates references for the State Water Board's regulations regarding hazardous and solid waste. Because the Basin Plan had previously referenced these regulations, the updated references have no regulatory effect.

2.8 Correction of a Referenced Year

On page IV-4, Confined Animal Activities, a typographical error of a referenced year was identified. These confined animal provisions were adopted by the Central Valley Water Board in the first edition of the Basin Plan. When staff drafted the second edition of the Basin Plan, no change was proposed for these provisions. Staff has continued to implement these provisions based on the correct date of 25 July 1975. Staff proposes to fix the misprint by providing the correct date year.

> Animal confinement facilities, including retention ponds, shall be protected from overflow from stream channels during 20-year peak stream flows for facilities that existed as of 25 July ~~1995~~ 1975 and protected from 100-year peak stream flows for facilities constructed after 25 July 1975.

The proposed amendment has no actual effect since staff has always implemented the correct date.

2.9 Update References to the California Department of Fish and Wildlife

Assembly Bill 2402, Chapter 559, Statutes of 2012 renamed the California Department of Fish and Game to the California Department of Fish and Wildlife. Therefore, for clarity, staff proposes to update all references in the Basin Plan from the California Department of Fish and Game to the California Department of Fish and Wildlife and make other minor corrections to typographic errors. This proposed amendment has no regulatory effect.

The following is the proposed amendment:

Page IV-8

> In accordance with a Memorandum of Understanding between the Department of Fish and Game (now the California Department of Fish and Wildlife) and Mosquito Abatement Districts in the Tulare Lake Basin (copy is Appendix 25)….

Page IV-15

> Compliance monitoring for wildlife problems shall continue to be deferred to the Department of Conservation and the California Department of Fish and Wildlife ~~Game~~.

Page IV-22

> …California Department of Toxic Substances Control, University of California Cooperative Extension, California Department of Fish and Wildlife ~~Game~~, U.S. EPA, U.S. Food and Drug Administration, National Academy of Sciences, U.S. Fish and Wildlife Service, Food and Agricultural Organization of the United Nations).

Page IV-28

6. The State Water Board should request legislation that will protect negotiated fish flow releases for instream uses in those critical reaches designated by the California Department of Fish and Wildlife ~~Game~~ from any new exercise of appropriative or riparian rights. Those flow releases should recognize and protect existing contractual commitments for beneficial use.

Page V-4

10. Implementation of the San Joaquin Valley Drainage Program's Recommended Plan

    In January 1992, the State Water Board signed a MOU with the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the U.S. Soil Conservation Service (now the Natural Resources Conservation Service), the U.S. Geological Survey, the Department of Water Resources, the Department of Fish and Game (now the California Department of Fish and Wildlife), and the Department of Food and Agriculture. Subject to the availability of funding and legal authority, these agencies agreed to use the management plan described in the September 1990 final report of the San Joaquin Valley Drainage Program as a guide for remedying subsurface agricultural drainage and related problems. See Appendix 20.

Page V-5

2. California Department of Fish and Wildlife ~~Game~~ and Mosquito Abatement and Vector Control Districts

   In March 1993, the Regional Water Board Executive Officer signed a~~n~~ MOU with the Department of Fish and Game (now the California Department of Fish and Wildlife) and Mosquito Abatement Districts in the southern San Joaquin Valley to coordinate weed control efforts in wastewater treatment facilities. See Appendix 25.

2.10 Update References to the California Department of Resources Recycling and Recovery (CalRecycle)

As of January 2010 the California Integrated Waste Management Board (Waste Management Board) was abolished and its duties and responsibilities were transferred to the California Department of Resources Recycling and Recovery (CalRecycle). For clarity, staff proposed to update all references in the Basin Plan from the California Integrated Waste Management Board (Waste Management Board) to the California Department of Resources Recycling and Recovery (CalRecycle). This proposed amendment has no regulatory effect.

The following is the proposed amendment:

Page IV-18

These discharges, and the waste management units at which the wastes are discharged, are subject to concurrent regulation by other state and local agencies responsible for land use planning, solid waste management, and hazardous waste management. "Local Enforcement Agencies" (mainly cities and counties) implement the state's solid waste management laws and local ordinances governing the siting, design, and operation of solid waste disposal facilities (usually landfills) with the concurrence of the California Department of Resources Recycling and Recovery (CalRecycle) (formerly the California Integrated Waste Management Board (Waste Management Board)). CalRecycle ~~The Waste Management Board~~ also has direct responsibility for review and approval of plans for closure and post-closure maintenance of solid waste landfills. The Department of Toxic Substances Control issues permits for all hazardous waste treatment, storage, and disposal facilities (which include hazardous waste incinerators, tanks, and warehouses where hazardous wastes are stored in drums as well as landfills, waste piles, surface impoundments, and land treatment units). The State Water Board, regional water boards, the Waste Management Board (now CalRecycle), and Department of Toxic Substances Control have entered into Memoranda of Understanding to coordinate their respective roles in the concurrent regulation of these discharges.

Page IV-19

Regional water boards and CalRecycle ~~the Waste Management Board~~ are implementing these new regulations in California under a policy for water quality control from the State Water Board (Resolution No. 93-62) and regulations from CalRecycle ~~the Waste Management Board~~.

Page V-4

8. Environmental Affairs Agency, Air Resources Board, and California Department of Resources Recycling and Recovery (CalRecycle) ~~California Integrated Waste Management Board~~

   On 27 August 1990, the State Water Board signed a MOU with the Environmental Affairs Agency, Air Resources Board, and California Integrated Waste Management Board (now CalRecycle) to enhance program coordination and reduce duplication of effort. This MOU consists of provisions describing the scope of the agreement (including definitions of the parties and issues to which the MOU applies), the principles which will govern the conduct of the parties, and the existing statutory framework. See Appendix 18.

11. California Integrated Waste Management Board (now the California Department of Resources Recycling and Recovery (CalRecycle))

On 8 January 1993, the State Water Board signed a MOU to address the Regional Water Board's review of Solid Waste Assessment Test (SWAT) reports. See Appendix 21.

2.11 Waivers

On 6 October 1999, Senate Bill 390 was signed into law. It revised section 13269 of the Water Code, which relates to waivers. The revisions required each Regional Water Board to review all waiver types included in their waiver policies and, if appropriate, renew the waiver type and the individual waivers that fell under that type. All waivers are limited to five years. The Basin Plan contains a copy of Regional Water Board Resolution No. 82-036, which is the waiver policy. Although the revised section 13269 requires that terms of a waiver be reviewed at a public hearing, the review and adoption of waivers is not subject to basin plan amendment procedures. The Central Valley Water Board has since adopted and renewed waivers consistent with Water Code section 13269 and these waivers may be found on the Central Valley Water Board's website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/#Waivers

Removing the list of waivers is consistent with the Water Code. Therefore, the existing waiver types described in the Basin Plan are outdated and should be removed. Removing the list of waivers has no regulatory effect since all of the listed waivers are no longer in effect.

Staff proposes language revision for the "Waivers" subsection on page IV-26 and removal of Appendices 27 and 28.

> State law allows Regional Water Boards to conditionally waive waste discharge requirements for a specific discharge or types of discharges where the waiver is consistent with any applicable state or regional water quality control plan and it is in ~~not against~~ the public interest ~~{California Water Code, Section 13269}~~. A waiver may not exceed five years in duration, but may be renewed by a Regional Water Board. Waiver conditions must include monitoring requirements unless the Regional Water Board determines that the discharge does not pose a significant threat to water quality. Prior to renewing any waiver for a specific type of discharge, the Regional Water Board shall review the terms of the waiver policy at a public hearing. At the hearing, the Regional Water Board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements (California Water Code, Section 13269). However, NPDES permits for discharge to surface waters may not be waived.
>
> ~~On 26 March 1982, the Regional Water Board adopted Resolution No. 82-036 to waive waste discharge requirements for certain discharges. The types of discharges and the limitations on the discharges which must be maintained if the~~

~~waivers are to apply are shown in Table IV-2. These waivers are conditional and may be terminated at any time.~~

The Regional Water Board may, after compliance with the California Environmental Quality Act (CEQA), allow short-term variance from Basin Plan provisions, if determined to be necessary to implement control measures for vector and weed control, pest eradication, or fishery management which are being conducted to fulfill statutory requirements under California's Fish and Game, Food and Agriculture, or Health and Safety Codes. In order for the Regional Water Board to determine if a variance is appropriate, agencies proposing such activities must submit to the Regional Water Board project-specific information, including measures to mitigate adverse impacts.

~~TABLE IV-2~~

~~WASTE DISCHARGE REQUIREMENT WAIVER AND LIMITATIONS~~

~~TYPE OF WASTE DISCHARGE~~	~~LIMITATIONS~~
~~Air conditioner, cooling and elevated temperature waters~~	~~Small volumes which will not change temperature of receiving water more than 1 degree C.~~
~~Drilling muds~~	~~Discharged to a sump with two feet of freeboard. Sump must be dried by evaporation or pumping. Drilling mud may remain in sump only if discharger demonstrates that it is nontoxic. Sump area shall be restored to pre-construction state within 60 days of completion or abandonment of well.~~
~~Clean oil containing no toxic materials~~	~~Used for beneficial purposes such as dust control, weed control and mosquito abatement where it cannot reach state waters.~~
~~Minor dredger operations~~	~~When soil is nontoxic and discharged to land.~~
~~Inert solid wastes (per CCR, Section 2524)~~	~~Good disposal practices.~~
~~Test pumpings of fresh water wells.~~	~~When assurances are provided that pollutants are neither present nor added.~~
~~Storm water runoff~~	~~Where no water quality problems are contemplated and no federal NPDES permit is required.~~
~~Erosion from development~~	~~Where BMP plans have been formulated and implemented.~~
~~Pesticide rinse waters from applicators~~	~~Where discharger complies with Regional Water Board guidance.~~
~~Confined animal wastes~~	~~Where discharger complies with Regional Water Board guidance.~~

~~Minor stream channel alterations and suction dredging~~	~~Where regulated by Department of Fish and Game agreements.~~
~~Small, short-term sand and gravel~~	~~All operations and wash waters confined to land.~~
~~Small, metal mining operations~~	~~All operations confined to land, no toxic materials utilized in recovery operations.~~
~~Swimming pool discharges~~	~~Where adequate dilution exists or where beneficial uses are not affected.~~
~~Food processing wastes spread on land~~	~~Where an operating / maintenance plan has been approved.~~
~~Construction~~	~~Where BMPs are used.~~
~~Agricultural commodity wastes~~	~~Small, seasonal and confined to land.~~
~~Industrial wastes utilized for soil amendments~~	~~Where industry certifies its nontoxic content and BMPs are used for application.~~
~~Timber harvesting~~	~~Operating under an approved timber harvest plan.~~
~~Minor hydro projects~~	~~Operating under water rights permit from State Water Resources Control Board or Department of Fish and Game agreement and no water quality impacts anticipated.~~
~~Irrigation return water (tail-water)~~	~~Operating to minimize sediment to meet Basin Plan turbidity objectives and to prevent concentrations of materials toxic to fish or wildlife.~~
~~Projects where application for Water Quality Certification is required~~	~~Where project (normally minor construction) is not expected to have a significant water quality effect and project complies with Dept. of Fish and Game agreements.~~
~~Septic tank / leachfield systems~~	~~Where project has county permit and county uses Water Board Guidelines.~~

2.12 Update Introduction to the State Water Board Policies and Plans

The Basin Plan provides descriptions of the applicable State Water Board water quality control policies and plans. The introduction to the State Water Board Policies and Plans on page V-1 cites an incorrect number of applicable policies and plans. Staff proposes the following non-regulatory revisions to the introductory paragraph:

> The ~~Eleven~~ State Water Board adopts water quality control policies and ~~five State Water Board~~ water quality control plans to direct R~~r~~egional W~~w~~ater B~~b~~oard actions.

2.13 State Water Board Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304

State Water Board Resolution 96-079 amended Resolution 92-49 to include a containment zone policy. The description of this policy should be updated to conform to the State Water Board policies. Staff proposes an amendment to the Basin Plan in item 8 of the State Water Board Policies and Plans on page V-2 as follows:

> 8. State Water Board Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304
>
> These policies and procedures~~, adopted 18 June 1992 and amended on 21 April 1994,~~ describe the manner in which the Regional Water Board will require dischargers to cleanup and abate the effect of discharges. This cleanup and abatement shall be done in a manner that promotes attainment of background water quality, or the highest water quality which is reasonable if background levels of water quality cannot be restored. Any cleanup less stringent than background water quality shall be consistent with State Water Board Resolution No. 68-16. <u>These policies and procedures, including future revisions, are specifically incorporated into this Basin Plan.</u> See Appendix 8.

The Basin Plan recognizes that the Central Valley Water Board regulates controllable water quality factors and that regulating controllable water quality factors may not necessarily cause water quality objectives to be achieved. The procedures included in the amendment to Resolution 92-49 are the criteria to identify and manage sites where there are severe limitations to the ability to remediate ground water contamination and the Central Valley Water Board determines that it is not reasonable to require remediation to the level that achieves the water quality objectives. These policies and procedures are consistent with the Basin Plan and describe what to do in a specific situation where controllable factors will not achieve the water quality objectives.

When the State Water Board amends its policies, the State Water Board conducts environmental analysis and public participation similar to the environmental analysis and public participation that the Central Valley Water Board would conduct. When adopting the amendment to this policy, the State Water Board identified the following potentially significant environmental effects:

- Pollutants in ground water in the containment zone may remain for some period of time or could migrate to ground water or surface water outside the containment zone.
- Pollutants in the containment zone could be at levels that pose adverse impacts to human health, including utility workers that must conduct activities that penetrate the subsurface for maintenance activities.
- Pollutants that migrate to surface waters may pose potentially significant impacts to biological resources.

- Residual pollutants in the containment zone could adversely affect local or regional water supplies and create nuisance due to taste and odor.

The State Water Board also identified potentially significant impacts if the designation of a containment zone allowed the property owner to cease active remediation and put the property to active use such as construction of industrial or commercial facilities which could contribute to growth in the community. There is also a potential for secondary impacts and cumulative and long-term impacts.

To address these potential impacts, the State Water Board included requirements in the policy to provide equivalent alternative water supplies, reimburse for increased water treatment costs and to cover costs associated with well modification for wells that are adversely affected by pollutants in the containment zone. The policy requires dischargers to propose and agree to implement a management plan to assess, cleanup, abate, manage, monitor and mitigate any significant adverse impacts to human health or the environment. In addition, the policy allows designating a containment zone only as long as the pollutants are kept in the containment zone and prohibits designating a containment zone where such a designation would allow exposure levels of constituents of concern that could have an adverse impact on human health or the environment.

For impacts associated with the property owner putting the property to use, the State Water Board determined that alternatives and measures to avoid or mitigate these impacts were outside the responsibility and jurisdiction of the State Water Board and Regional Water Boards (collectively Water Boards) and would need to be required by other agencies. Finally, with respect to secondary impacts and cumulative and long-term impacts, the State Water Board determined that these impacts were too speculative to analyze at the time the policy was considered.

The State Water Board found that it had incorporated feasible requirements and mitigation into the policy which significantly reduces any potential and unforeseen cumulative and long-term impacts. In fact, the provisions necessary to achieve containment zone status (e.g., source removal, containment, consultation with local water and ground water management agencies, and mitigation) may have beneficial cumulative and long-term impacts. In balancing the benefits of the policy against the potential for some undetermined cumulative or long-term impacts, the State Water Board determined that overriding economic benefits of the project outweigh any significant effects on the environment (which are not expected to occur), and the potential for effects is, therefore, acceptable.

2.14 Nonpoint Source Implementation and Enforcement Policy

The Porter-Cologne Water Quality Control Act was amended in 1999 to require the State Water Board to develop guidance to enforce the state's nonpoint source pollution control program. The State Water Board complied by adopting the *Nonpoint Source Implementation and Enforcement Policy* on 20 May 2004.

Staff proposes to add the Nonpoint Source (NPS) Implementation and Enforcement Policy and include revised language to page V-2, item 11 of the State Water Board Policies and Plans with the following:

11. ~~State Water Board Resolution No. 88-123,~~ Nonpoint Source Management Plan and the Nonpoint Source Implementation and Enforcement Policy

    ~~This plan was adopted in 1988 and describes three general management approaches that are to be used to address nonpoint source problems. These are 1) voluntary implementation of best management practices, 2) regulatory based encouragement of best management practices, and 3) adopted effluent limits.~~

    ~~The approaches are listed in order of increasing stringency. In general the least stringent option that successfully protects or restores water quality should be employed, with more stringent measures considered if timely improvements in beneficial use protection are not achieved. The Regional Water Board will determine which approach or combination of approaches is most appropriate for any given nonpoint source problem.~~

    In December 1999, the State Water Board, in its continuing efforts to control nonpoint source (NPS) pollution in California, adopted the *Plan for California's Nonpoint Source Pollution Control Program* (NPS Program Plan). The NPS Program Plan upgraded the State's first *Nonpoint Source Management Plan* adopted by the State Water Board in 1988 (1988 Plan). Upgrading the 1988 Plan with the NPS Program Plan brought the State into compliance with the requirements of Section 319 of the Clean Water Act and Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

    The NPS Implementation and Enforcement Policy, adopted by the State Water Board on 20 May 2004 (State Water Board Resolution No. 2004-0030), explains how the Porter-Cologne Act mandates and authorities, delegated to the State Water Board and Regional Water Boards by the California Legislature, will be used to implement and enforce the NPS Program Plan. The policy also provides a bridge between the NPS Program Plan and the *SWRCB Water Quality Enforcement Policy*. The NPS Implementation and Enforcement Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented according to the policy's provisions.

The policy specifies that waste discharge requirements, waivers and prohibitions are the administrative tools available to the Water Boards to regulate nonpoint source dischargers the same as any other discharger under the Water Code. The policy recognizes the significant challenges of controlling nonpoint source pollution due to the extent and diversity of discharges. So, the policy provides guidelines for development of third-party control programs consistent with the Watershed Management Plans discussion on page IV-29 of the Basin Plan. The policy is also consistent with how the Central Valley Water Board regulates irrigated

agriculture and how the Central Valley Water Board has structured monitoring programs for irrigated lands and dairies.

When the State Water Board adopted the policy, the State Water Board found that adoption of the policy would not have a significant adverse effect on the environment.

2.15 Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)

In March 2000, the State Water Board adopted the SIP. On 24 February 2005, the State Water Board amended the SIP to allow water effects ratios to be established in individual National Pollutant Discharge Elimination System permits, make a minor change to the reasonable potential trigger, and make other non-regulatory language corrections.

Staff proposes the following amendment to page V-2.01 of the State Water Board Policies and Plans:

> ~~11.~~ 12. ~~State Water Board Resolution No. 2000-015,~~ Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California~~"~~ (a.k.a. State Implementation Policy or SIP)
>
> ~~In March 2000, t~~The State Water Board adopted ~~the SIP in Resolution No. 2000-015. This Policy~~ a policy that establishes: (1) implementation provisions for priority pollutant criteria promulgated by the U.S. Environmental Protection Agency (U.S. EPA) through the National Toxics Rule ~~(NTR)~~ (40 CFR 131.36) (promulgated on 22 December ~~22,~~ 1992 and amended on 4 May ~~4,~~ 1995) and through the California Toxics Rule (~~CTR~~40 CFR 131.38) (promulgated on 18 May 2000 and amended on 13 February 2001), and for priority pollutant objectives established by Regional Water Boards in their basin plans; (2) monitoring requirements for 2,3,7,8-TCDD equivalent; and (3) chronic toxicity control provisions. In addition, ~~this Policy~~ the SIP includes special provisions for certain types of discharges and factors that could affect the application of other provisions in ~~this Policy~~ the SIP. The SIP including future revisions is incorporated into this Basin Plan and shall be implemented according to the policy's provisions.

When the State Water Board adopted the SIP in 2000, the State Water Board identified one potentially significant adverse environmental impact that was associated with allowing Regional Water Boards the authority to issue longer compliance schedules to allow for developing and implementing Total Maximum Daily Loads (TMDLs). To address the identified environmental impact, the State Water Board included provisions to lessen or avoid potentially significant adverse effects on the environment stemming from the TMDL compliance schedule provisions and found that there are overriding considerations that outweigh any adverse environmental effects that might potentially occur. The State Water Board determined when adopting an amendment to the SIP in 2005 that the proposed revisions would not degrade the quality of the environment, substantially reduce fish or wildlife habitat, cause fish or wildlife population to drop below self-sustaining levels, or threaten to eliminate a plant or animal

community. The State Water Board also determined that the revisions would not cause effects on human beings directly or indirectly. Finally, the State Water Board determined that no economic impacts would result from adoption of the revisions. It should be noted that the State Water Board has since adopted a Policy for Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits (Compliance Schedule Policy) that specifies the criteria that the Water Boards evaluate when establishing compliance schedules and the documentation requirements for compliance schedules. See section 2.19 of this Staff Report.

2.16 Water Quality Enforcement Policy & Supplemental Environmental Projects Policy

On 19 February 2002, the State Water Board adopted the *Water Quality Enforcement Policy* to provide a framework for identifying and investigating instances of noncompliance and for taking enforcement actions. The goal of the policy is to assure fair, firm and consistent enforcement by the Water Boards.

On 17 November 2009, the State Water Board revised the Water Quality Enforcement Policy to provide criteria to help Regional Water Board staff and management prioritize enforcement actions and to provide methodology to ensure consistency in determining administrative civil liability (ACL) penalty amounts.

The State Water Board or Regional Water Board may allow a discharger to satisfy part of the monetary assessment imposed in an ACL order by completing or funding one or more Supplemental Environmental Projects (SEPs). SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. Water Code section 13385(i) allows limited use of SEPs associated with mandatory minimum penalties. Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In the absence of other statutory authority in the Water Code regarding the use of SEPs, Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an ACL. On 3 February 2009, the State Water Board adopted the SEP Policy to provide direction on the amount of the liability that can be used for SEPs and to provide for increased accountability to ensure that the SEP results in environmental benefits.

Staff proposes to add these policies to the Basin Plan as item 13 of the State Water Board Policies and Plans with the following description:

> 13. Water Quality Enforcement Policy (Enforcement Policy) and Policy on Supplemental Environmental Projects (SEP Policy)
>
> The State Water Board adopted the Enforcement Policy to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. The State Water Board adopted the SEP

Policy as an adjunct to the Water Boards' enforcement program and allows for the inclusion of a supplemental environmental project in administrative civil liability actions as long as certain criteria are met to ensure that such a project has environmental value, furthers the goals of the State Water Board and Regional Water Boards, and are subject to appropriate input and oversight by the Water Boards. Both the Enforcement Policy and the SEP Policy, including future revisions, are incorporated into this Basin Plan and shall be implemented according to the policies' provisions.

When the State Water Board considered the Enforcement Policy, the SEP Policy and the amendment to the Enforcement Policy, the State Water Board found that adoption of these policies were categorically exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15321.

2.17 Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List

On 30 September 2004, the State Water Board adopted a *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (303(d) Listing Policy)*. Staff proposes to add this policy to the Basin Plan as item 14 of the State Water Board Policies and Plans with the following description:

14. Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (*303(d) Listing Policy*)

Pursuant to California Water Code Section 13191.3(a), this State policy for water quality control describes the process by which the State Water Board and the regional water boards will comply with the listing requirements of Section 303(d) of the federal Clean Water Act. The objective of this policy is to establish a standardized approach for developing California's Section 303(d) List in order to achieve the overall goal of achieving water quality standards and maintaining beneficial uses in all of California's surface waters. The 303 (d) Listing Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions.

Developing the section 303(d) list is required by federal law and regulations and the Legislature required the State Water Board to adopt guidelines to develop section 303(d) list based on consensus recommendations of the Public Advisory Group. The Public Advisory Group recommended that the State Water Board develop a process that was transparent and that a consistent standardized set of tools and principles be used across the regional water boards to evaluate data.

The 303(d) Listing Policy provides a consistent, scientifically defensible approach to the listing process used to comply with the section 303(d) list and the policy required that

section 303(d) list be combined with the 305(b) report. The policy includes a weight-of-evidence approach which was required by the Legislature and therefore is not considered to be a project for purposes of CEQA. The State Water Board found that the policy would not have an adverse effect on the environment.

2.18 Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options

On 16 June 2005, the State Water Board adopted a policy describing how existing regulatory tools and mechanisms may be used to address waters that do not meet applicable water quality standards. Staff proposes to add this policy to the Basin Plan as item 15 of the State Water Board Policies and Plans with the following description:

> 15. Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options (Impaired Waters Policy)
>
> Section 303(d) of the Clean Water Act requires states to identify waters within their borders that are not attaining water quality standards. This State policy for water quality control describes the existing tools and mechanisms that the regional water boards will use to address the water bodies listed as impaired under Section 303(d) of the federal Clean Water Act. The Impaired Waters Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions.

Federal laws and regulations require that the state take certain actions including develop total maximum daily load allocations to address impaired waters. This policy lists all the ways the Water Boards can address impaired waters in accordance with the administrative tools provided in the Water Code.

When the State Water Board adopted this policy, the State Water Board concluded that the policy was not a project as defined by CEQA and, even if it were a project, it would be categorically exempt from CEQA under CCR, title 14, section 15308.

2.19 Policy for Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits

On 15 April 2008, the State Water Board adopted a policy standardizing permit compliance schedules (Compliance Schedule Policy). Staff proposes to add this policy to the Basin Plan as item 16 of the State Water Board Policies and Plans with the following description:

> 16. Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Compliance Schedule Policy)
>
> The Policy authorizes the Regional Water Board to include a compliance schedule in a permit for an existing discharger to implement a new, revised,

> or newly interpreted water quality objective or criterion in a water quality standard that results in a permit limitation more stringent than the limitation previously imposed. The Compliance Schedule Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions.

Basin Plans must conform to State Water Board policies (Wat. Code, § 13240). The Compliance Schedule Policy applies to the compliance schedules authorized by the Regional Water Boards in National Pollutant Discharge Elimination System (NPDES) permits modified or reissued after the effective date of the Policy except for compliance schedules that are consistent with waste load allocations and implementation schedule or compliance schedule in a Total Maximum Daily Load (TMDL) approved by USEPA under Clean Water Act section 303(c).

The Basin Plan has provisions authorizing the Regional Water Board to establish compliance schedules in NPDES permits. The provisions are consistent with the Compliance Schedule Policy; although, the Compliance Schedule Policy includes additional documentation requirements than currently specified in the Basin Plan. Therefore, staff proposes to amend the Basin Plan to refer to the Compliance Schedule Policy for specific criteria and requirements for how the Regional Water Board will establish compliance schedules as follows:

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> The Regional Water Board recognizes that immediate compliance with water quality objectives adopted by the Regional Water Board or the State Water Board, or with water quality criteria adopted by the federal Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Water Board determines it is infeasible for a discharger to comply immediately with such objectives of criteria, compliance shall be achieved in the shortest practicable period of time (determined by the Regional Water Board), not to exceed ten years after the adoption of applicable objectives or criteria. This policy shall apply to water quality objectives and water quality criteria adopted after the effective date of this Basin Plan update. The Regional Water Board will establish compliance schedules consistent with the provisions of the State Water Board's Compliance Schedule Policy (Resolution 2008-0025).

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> Where the Regional Water Board determines it is infeasible to achieve immediate compliance with water quality objectives adopted by the Regional Water Board or the State Water Board, or with water quality criteria adopted by the federal Environmental Protection Agency, or with an effluent limitation based on these objectives or criteria, the Regional Water Board shall establish in NPDES permits a schedule of compliance. The schedule of compliance shall include a time schedule for completing specific actions that demonstrate reasonable progress toward the attainment of the objectives or criteria and shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Water Board) required to achieve compliance. In no event

shall an NPDES permit include a schedule of compliance that allows more than ten years (from the date of adoption of the objective or criteria) for compliance with water quality objectives, criteria or effluent limitations based on the objectives or criteria. Schedules of compliance are authorized by this provision only for those water quality objective or criteria adopted after the effective date of this provision. The Regional Water Board will establish schedules consistent with the provisions of the State Water Board's Compliance Schedule Policy (Resolution 2008-0025) and ~~I~~in accordance with Title 23, California Code of Regulations, Section 2231, compliance schedules may be included in waste discharge requirements for discharges other than from point sources to navigable waters.

The proposed amendment will make the Central Valley Water Board compliance provisions consistent with the Compliance Schedule Policy and clarify the documentation requirements associated with the application and implementation of compliance schedules. The proposed amendment does not change when the Central Valley Water Board establishes compliance schedules. When the State Water Board adopted the Compliance Schedule Policy, the State Water Board found that adoption of the policy would not have significant or potentially significant effects on the environment so the State Water Board did not propose an alternatives or mitigation measures.

2.20 Policy for Water Quality Control for Recycled Water

On 3 February 2009, the State Water Board adopted a Recycled Water Policy with Resolution 2009-0011. The Recycled Water Policy has the goal of increasing the use of recycled water and storm water and provides direction on the appropriate criteria to be used in issuing permits for recycled water projects. The Recycled Water Policy specifically establishes requirements for regulating incidental runoff from landscape irrigation with recycled water ground water recharge projects and includes provisions to address constituents of emerging concern. The Recycled Water Policy also recognizes the need for salt and nutrient management plans and specifies what must be included in these plans.

Staff proposed to add this policy to the Basin Plan as item 17 of the State Water Board Policies and Plans with the following description:

17. Policy for Water Quality Control for Recycled Water (Recycled Water Policy)

The Recycled Water Policy establishes requirements to increase the use of recycled water in California. These requirements include the development and adoption of salt/nutrient management plans, requirements for the regulation of incidental runoff from landscape irrigation with recycled water, criteria and procedures for streamlined permitting of recycled water landscape irrigation projects, procedures for permitting ground water recharge projects including procedures for demonstrating compliance with the Resolution No. 68-16 (the State Antidegradation Policy), and provisions for addressing constituents of emerging concern. The Recycled

Water Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented in accordance with the Policy's provisions.

The Recycled Water Policy is consistent with Central Valley Water Board policies and Resolution No. R5-2009-0028 in which the Central Valley Water Board identifies federal, state and regional laws and regulations that support the need for regionalization and recycling. The Central Valley Water Board also previously participated in establishing the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) initiative to develop a salinity and nitrate management plan for the Central Valley that is to be implemented through amendments to the Basin Plans. In Resolution No. R5-2010-0024, the Central Valley Water Board noted that the CV-SALTS initiative is consistent with the provisions in the Recycled Water Policy to develop salt and nutrient management plans. When the State Water Board adopted the Recycled Water Policy, the State Water Board found that potential site-specific recycled water project impacts may need to be considered in subsequent environmental analyses performed by lead agencies, pursuant to Public Resources Code section 21159.1, and incorporated mitigation measures that reduced impacts to less than significant levels.

3 OTHER CONSIDERATIONS

3.1 Environmental Considerations

The proposed Basin Plan amendments are to correct errors and update language. In addition, incorporate State Water Board policies that have already been adopted and implemented by the Water Boards. These amendments are non-regulatory therefore do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment as a result of the amendments.

When the State Water Board adopted the Nonpoint Source Implementation and Enforcement Policy and revisions to the SIP and the Compliance Schedule Policy, the State Water Board found that these policies would not have significant or potentially significant effects on the environment. When the State Water Board adopted the revisions to the Enforcement Policy, including adoption of the Policy on Supplemental Environmental Projects, the State Water Board found that adoption of these policies were categorically exempt from CEQA under California Code of Regulations, title 14, section 15321. When the State Water Board adopted the Listing Policy and the Impaired Waters Policy, the State Water Board determined that adoption of these policies was not a project as defined by CEQA.

When the State Water Board amended Resolution No. 92-49, the State Water Board identified potentially significant impacts and incorporated feasible requirements and mitigation in to the policy which significantly reduced any potential and unforeseen cumulative and long-term impacts. The State Water Board also determined that overriding economic benefits of the project outweighed any remaining significant effects on the environment, which were not expected to occur, and therefore the potential of effects was acceptable.

When the State Water Board adopted the Recycled Water Policy, the State Water Board found that potential site-specific recycled water project impacts may need to be considered in subsequent environmental analysis performed by lead agencies, pursuant to Public Resources Code section 21159.1, and incorporated mitigation measures that reduced impacts to less than significant levels.

Incorporating these policies by reference into the Basin Plan will not have any additional potentially significant effects on the environment that need to be analyzed.

These proposed edits and updates to the Basin Plan do not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, the proposed amendments are not a “project” for purposes of CEQA compliance.

3.2 Necessity

The proposed Basin Plan Amendments are necessary to correct and update the existing Basin Plan. The inclusion of these corrections and updates assures that all stakeholders are aware of the appropriate and applicable Basin Plan actions of the Central Valley Water Board.

3.3 Consistency with Federal and other State laws and regulations

The proposed amendments will update the Basin Plan language to be consistent with other State laws and regulations currently in effect.

4 RECOMMENDATION

Staff recommends that the Central Valley Water Board approve the proposed Basin Plan amendments.